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PATENT

Attorney Docket No. 3495.0381-00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Yosser Ben Achour et al.

Application No.: 10/733,232

Filed: December 12, 2003

For: GENE ASSOCIATED WITH  
LEISHMANIA PARASITE  
VIRULENCE

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)  
) Group Art Unit: 1645  
)  
) Examiner: Jana A. Hines  
)  
)  
) Confirmation No.: 4579  
)  
)

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**APPLICATION FOR PATENT TERM ADJUSTMENT-PRE-GRANT**

In accordance with 37 C.F.R. § 1.705(b), Applicant hereby applies for patent term adjustment under 35 U.S.C. § 154(b) of 266 days. This application is being filed before or with the issue fee payment, as required by 37 C.F.R. § 1.705(b).

**I. Statement of the Facts Involved**

**A. Correct Patent Term Adjustment**

Applicant received the Determination of Patent Term Adjustment with the Notice of Allowance and Fee(s) Due mailed from the Patent and Trademark Office (PTO) on September 26, 2008, advising that this application is entitled to 0 days of patent term adjustment.

Applicant has calculated a patent term adjustment of 266 days based on the following facts:

12/22/2008 JAOJ02 00000001 10733232  
01 FC:1455 200.00 DP

The above-identified application was filed December 12, 2003.

The first Office action was mailed on June 14, 2005, resulting in a PTO delay of 122 days beyond the 14 months provided by 35 U.S.C. § 154(b).

Applicant filed a response to the first Office action on August 15, 2005, resulting in no reduction of patent term adjustment.

A second Office action was mailed November 7, 2005, resulting in no increase in patent term adjustment.

Applicant filed a response to the second Office action on May 5, 2006, resulting in a decrease in patent term adjustment of 87 days.

A third and final Office action was mailed August 24, 2006, resulting in no increase in patent term adjustment.

Applicant filed a Notice of Appeal on February 26, 2007, resulting in a decrease in patent term adjustment of 94 days.

Applicant filed a Request for Continued Examination on June 25, 2007, resulting in no decrease in patent term adjustment. Based on the filing of this RCE, the PTO delay under the 3-year pendency rule provided by 35 U.S.C. § 154(b)(1)(B) is 195 days.

A fourth Office action was mailed September 7, 2007, resulting in no increase in patent term adjustment. This Office action, however, did not examine the listing of claims presented in the Amendment After Final filed on January 8, 2007, as requested in the RCE.

Applicant's representative contacted the Examiner by telephone on December 4, 2007, and indicated that the fourth Office action did not consider the correct listing of claims.

A corrected fourth Office action was mailed March 4, 2008, resulting in a PTO delay of 130 days. The corrected Office action withdrew the Office action dated September 7, 2007. Because of the Examiner's error, Applicant was unable to proceed with prosecution of the application. Applicant therefore contends that PTO delay should include the 130 days spanning October 25, 2007, four months from the filing of the RCE, to March 4, 2008, the mailing date of the corrected Office action.

Thus, the total of PTO adjustments based on delay is 447 days ( $122+195+130$ ) and the total of reductions in term adjustment is 181 days ( $87+94$ ), resulting in a patent term adjustment of 266 days total. Applicant respectfully requests that the current patent term adjustment be reconsidered.

**B. Terminal Disclaimer**

The above-identified application is not subject to a Terminal Disclaimer.

**C. Reasonable Efforts**

Applicant filed a response to the second Office action on May 5, 2006, resulting in a decrease in patent term adjustment of 87 days. Applicant filed a Notice of Appeal on February 26, 2007, resulting in a decrease in patent term adjustment of 94 days. Applicant made reasonable efforts to conclude prosecution of the application.

**II. Fee**

As required by 37 C.F.R. § 1.705(b)(1), this application is accompanied by a fee of \$200.00. Please charge any other fees due in connection with the filing of this application to Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: December 19, 2008

By: Maryann T. Puglielli

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